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Advancing Justice

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TESTIMONY OF RAPHAEL L. PODOLSKY

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S.B. 200 – Eviction records — **SUPPORT** (amendment requested)

Eviction records are commonly used to screen tenant applicants. Unfortunately, that commonly results in tenants being screened out, without regard to the disposition of the case (e.g., even if the tenant won), the ground for the eviction, the facts that led to the case being filed, or even that the case refers to the same person. The Judicial website itself warns users against using the data for tenant screening, but it is routinely used for this purpose anyway. S.B. 200 reduces the amount of time after disposition that an eviction record stays on the Judicial Branch website – to 30 days if the tenant wins or if the case is dismissed or withdrawn. It appears, as it should, to reduce the time to one year if the landlord prevails, but the wording is incorrect, because, as drafted, it prevents removal in less than a year but does not actually require removal. The bill also prohibits commercial screening services from including removed cases, but it does so only if the companies have "actual knowledge" of the removal. Companies will have such knowledge only if the cases are not included in the bulk data they receive.

We strongly support the bill but request two changes: (1) the wording should be made clear that judgments for the landlord must be removed after one year (line 16-17) and (2) the bulk data base sold by Judicial to commercial users should not include removed records, so that "actual knowledge" will not be an issue.

H.B. 5205 – Fair rent commissions — **SUPPORT**

Numerous articles have reported extraordinary rent increases throughout the housing market as the pandemic has declined, many from widespread buy-ups of residential properties by out-of-state investors seeking to increase profits. Under Connecticut law, towns have the power to create fair rent commissions. Approximately 25 towns have such commissions. Those towns are a very diverse group. Some are large and urban (e.g., New Haven, Hartford, and Stamford); some are suburban – both large and small (e.g., Farmington, Newington, Hamden, and West Hartford); and some are small or rural (e.g., Colchester and Westbrook). The enabling act for such commissions begins at C.G.S. 7-148b. The commissions, which respond to individual tenant complaints, have the power to reduce rent increases that are "so excessive as to be harsh and unconscionable." Their decisions often reinforce code enforcement orders by delaying increases until repairs are made or make large rent increases less harsh by requiring that they be phased in over time. In reality, most tenants have no practical way to challenge rent increases, no matter how large, unless they live in a town with a fair rent commission. This creates the odd and unfair result that this fundamental right of tenants varies depending on the town in which the tenant lives. This bill would require towns of at least 14,000 population to have a fair rent commission. We strongly support the bill. Any version of this bill that significantly enlarges the number of towns with fair rent commissions would be a strong step in the right direction.

H.B. 5233 – No-fault evictions ("just cause evictions") SUPPORT

Since 1980, Connecticut has had a statute (C.G.S. 47a-23c) that protects households that include a senior (at least 62 years old) or a person with long-term disabilities that live in buildings or complexes with five or more apartments from being forced to move other than for cause. This bill extends those protections to all households in those buildings. It applies only to buildings and complexes that are already covered by the existing "just cause eviction" law. It does not apply to one- to four-family buildings (unless part of a larger complex).

Most Connecticut evictions are based on cause, usually non-payment of rent. Historically, 85% to 90% of evictions claim non-payment. A much smaller percentage allege other breaches of the lease or nuisance. But about 10% had been "no-fault" evictions in which the landlord makes no allegation of tenant fault. During the pandemic, the percentage of these no-fault evictions significantly increased, apparently so that landlords could avoid temporary restrictions on evictions based on non-payment of rent. As a matter of common sense landlords retain tenants unless they have some reason for not keeping them. No-fault evictions, however, involve no disclosure of the reason for the eviction and therefore no opportunity for the tenant to rebut. Apart from C.G.S. 47a-23c, Connecticut has a similar rule, without an age or disability restriction, for residents in mobile home parks who own their home but rent their lot. In addition, under federal rules and court decisions, tenants in public housing and most subsidized housing similarly cannot be evicted without a reason being given.

At least two states – New Jersey and New Hampshire – have long had eviction laws that require cause to evict tenants (with exceptions for small owner-occupied buildings). H.B. 5233 expands the existing Connecticut statute to apply to all households in buildings that are already covered by Section 47a-23c. This extension of an existing statute is both a matter of fairness, so that the tenant has an opportunity to respond to the reason for the eviction, and a matter that promotes residential stability. It also discourages the use of no-fault evictions, which can be used to retaliate against tenants who have complained to the landlord about lack of maintenance or code compliance or to hide undisclosed discrimination.

H.B. 5234 – Landlord and tenant rights and responsibilities

This bill contains seven different, mostly unrelated proposals, each of which could have been a separate bill. Our positions are as follows:

Section 1 – Security deposit damage insurance FURTHER STUDY

Section 1 would authorize a new product called "security deposit damage insurance," which could be used by tenants in place of a security deposit. In effect, the tenant would make non-refundable payments to the company providing this "insurance," which would pay claims made by the landlord. Security deposit requirements (a landlord can require up to two months' security) are, indeed, a major obstacle to tenants finding apartments; and there is a very real need to address this problem. At first glance, this proposal may seem like the perfect solution. There are, however, significant reasons not to jump too quickly into support for this product. In both Washington and Oregon, for example, tenant advocates opposed similar bills that were introduced there, and the drafting of this bill leaves many questions about its operation and

collateral consequences unanswered. For example, although this arrangement is presented as "insurance," nothing prevents the company from suing the tenant for any claims paid; yet there is no clear way for the tenant to dispute a landlord's claims, and the protections of the Security Deposit Act do not seem to apply since the insurance is not itself a security deposit. We are separately submitting a list of changes that we believe should be made in the bill to meet the most obvious concerns. We are worried, however, that they cannot be resolved without the kind of analysis and review for which this legislative session does not provide sufficient time. As a result, we think that action on this bill during this session is premature.

Section 2 – Pre-occupancy walk-throughs **SUPPORT**

This section requires the landlord, on request, to permit a joint walk-through of the apartment before the tenant moves in. DOH is required to produce a standard inspection checklist to be used. The landlord cannot withhold from the security deposit or otherwise hold the tenant liable at the end of the tenancy for items that were identified as defective at the time of the pre-occupancy walk-through.

Section 3 – Application fees **SUPPORT**

This section effectively prohibits landlords from assessing application fees for credit and tenant screening reports unless such checks are in fact conducted and the results made available to the tenant. It also limits the portion of the cost of those checks that can be passed on to the tenant to $20.

Section 4 – Notice of protection against no-fault eviction

SUPPORT BUT AMENDMENT NECESSARY

Under existing law – which has been in place since 1980 – tenants in households which include a tenant who lives in a building or complex with five or more units and is at least 62 years old or who has a long-term disability can be evicted only for cause. See H.B. 5233 above. Stated differently, they cannot be evicted merely because their lease or other right to be there has expired – the landlord must provide an actual reason for not retaining them as tenants. Remarkably, our contacts with renters lead us to believe that most of the seniors and tenants with disabilities covered by this long-standing statute – and many of their landlords as well – do not know that this protection exists, even though it has been the law for more than 40 years. This section of H.B. 5234 requires that they be given a form notice of their rights (prepared by the Department of Housing) at the time of rental and lease renewal.

Necessary amendment: It is important, however, that the bill be changed to require that the notice be routinely give to all tenants, not only to seniors and those with disabilities. That is because the landlord will not necessarily know the age of tenants or that they are disabled, and it would be neither proper nor legal for the landlord to ask at the time of leasing

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Section 5 – Notice of foreclosure to prospective tenants **NO ACTION**

This section requires the landlord of a building for which a foreclosure is pending or that has gone to foreclosure judgment to provide written notice of the foreclosure to any prospective tenant. We believe that the proposal is unnecessary and that it may produce

unintended consequences, particularly in smaller owner-occupied buildings, by undercutting the ability of the landlord to work out an agreement with the lender that allows the landlord to keep the property. We believe it best that the committee take no further action on the bill.

Sections 6 through 8 – Notice of foreclosure to existing tenants **NO ACTION**

These sections require that notice of a pending foreclosure be given to existing tenants in the building and that such tenants have the option of a simplified court action under C.G.S. 47a-14h for the appointment of a receiver for the sole purpose of collecting rents. This proposal is very likely to backfire and be harmful to both the landlord and the tenants in the building. The pendency of a foreclosure action does not relieve landlords of any of their maintenance responsibilities, and they can and should be expected to maintain the building during foreclosure. Tenants already have the right to seek a receivership under C.G.S. 47a-14h against the landlord if the landlord is not maintaining the property – no separate statute is needed because a foreclosure is pending. If, however, the landlord is trying to work out an agreement to preserve ownership of the property, this bill is very likely to kill any possibilities. Tenants, upon receiving the notice, are likely to begin the process of moving out. In addition, as written, this bill allows a receiver to collect rents but not maintain the building. The result will be abandonment, not repair.

Section 10 – Provision of voter registration forms by landlords **SUPPORT**

This section requires landlords to provide new tenants with voter registration forms when they sign their first lease. It is a broader version of S.B. 170 (see below), which applies only to housing authorities. There is no more appropriate time than when tenants move to a new address to encourage them to register to vote. Cities as diverse as Minneapolis and St. Paul, Minnesota; Seattle, Washington; East Lansing, Michigan; and Tacoma Park, Maryland require all landlords to provide new tenants with voter registration forms. We should do the same.

H.B. 5208 – Criminal records **SUPPORT**

The Clean Slate bill from 2021 limited access to certain criminal records but did not resolve the question as to what extent landlords can reject applicants based on available criminal records. This bill includes its own look-back period, requires that crimes considered in the lookback period bear some relationship to their impact on being a good or bad tenant, and that there be an opportunity for applicants to explain their circumstances.

H.B. 5041 – Energy cost rating information for tenants

SUPPORT (amendment requested)

This bill phases in over three years a requirement that landlords disclose to new tenants a "home energy label" rating for the apartment if gas, electricity, and heating fuel are not included in the rent. We support this requirement. Heat and utility costs can amount to hundreds of dollars per month; and it is impossible for tenants to compare the cost of apartments without any knowledge of likely heat and utility costs.

Requested amendment: An energy label will help tenants consider energy efficiency in making apartment rental decisions. We recommend, however, that an option contained in last year's version of this bill (S.B. 882 of the 2021 legislative session) be included in this bill. The amendment would permit the landlord, in lieu of providing an energy label, to disclose the actual monthly and annual heat and utility costs over the past year of occupancy. That bill also made provision for companies to release these costs for this purpose. The actual cost amount is likely to be of more value to a tenant looking for an apartment than would be a label.

S.B. 168 – Right to housing — SUPPORT

This bill identifies housing as a fundamental right and, in essence, a goal for the state. It requires state and local government agencies to consider impact on the right to housing in implementing their policies. It also directs that existing state agency housing programs focus, to the extent practicable, on the lower-income end of the range of households eligible for the programs they administer, as well as for households facing homelessness.

H.B. 5209 – Housing authority areas of operation

SUPPORT WITH NECESSARY AMENDMENT

This bill requires that housing authorities, in doing development in nearby towns, be treated without discrimination and in the same manner as private for-profit and non-profit housing developers. It does not exempt them from any zoning laws that apply to other developers. Under existing law, in contrast, housing authorities must obtain the advance approval of the town's legislative body, a requirement that does not apply to other developers.

Necessary amendment: H.B. 5209, as it came out of LCO, erroneously is the exact opposite of the bill's intended purpose – it reinforces the requirement that housing authorities obtain the approval of the town's legislative body. We support the substitute language proposed by Elm City Communities (the New Haven Housing Authority), which corrects this error.

S.B. 170 – Housing authority provision of voter registration forms — SUPPORT

This is a substantially narrower version of Section 10 of H.B. 5234, because it applies only to housing authorities. It requires housing authorities to provide voter registration cards to new tenants at the time of admission and to existing tenants at the time of recertification. The New Haven Housing Authority already does this, and others should be required to do so. It makes good sense for the same reason as H.B. 5234. Tenants who move always need to adjust their voter registration (or register if they are not already registered). The time of moving is the natural time that they should be presented with a voter registration card. The bill, it should be noted, does not allow the housing authority to register tenants to vote – only to provide them with a voter registration card.

H.B. 5206 – Housing authority commissioner training

SUPPORT (amendment requested)

This bill requires housing authority commissioners to participate in a HUD-based training. Last year, the legislature required training for zoning commissioners, who, like

housing authority commissioners, are lay people. The training is beneficial, and it makes sense. The bill also requires that housing authority tenants be provided with information on how to contact management, how to contact CHRO and the local health department, and a copy of the Judicial Branch posting of landlord and tenant rights and responsibilities.

Requested technical amendment: The information provided to tenants should include not only contact information to the local health department but also for the local housing code enforcement agency.